

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY HARDY,

Plaintiff,

vs.

ROBERT VIETA,

Defendant

Case No. 02-40255

HONORABLE PAUL V. GADOLA
HONORABLE STEVEN D. PEPE

OPINION AND ORDER

(RE: DKT. ## 109, 110, 111, 115, 116, 119, 121)

All pretrial proceedings have been referred to the undersigned pursuant to 28 U.S.C 636 (b)(1)(A) and (B).

Plaintiff has filed multiple motions which shall be addressed as follows:

Motion to Amend (Dkt. #121) – HELD IN ABEYANCE – Plaintiff’s motion does not include a proposed amended pleading as required by E.D.MICH.L.R. 15.1. Further, while the motion itself appears to request the addition of several parties, it does not explain the factual allegations relating to these parties.

Therefore, on or before September 12, 2006, Plaintiff shall file a document titled “Proposed Amended Complaint” for consideration in connection with this motion and shall italicize or, if handwritten, underline the portions of the complaint that are different from the original complaint. At the time of filing the Proposed Amended Complaint Plaintiff must also show cause why this amendment should not be denied on the basis of timeliness and prejudice to Defendant and the proposed defendants, given that this matter was filed in September 2002 and the dates for discovery and filing dispositive motions passed on July 14 and August 14, 2006,

respectively.

Failure to comply with this Order as directed shall result in denial of this motion.

Motion to File Interlocutory Appeal (Dkt. #109) – DENIED – The Sixth Circuit has joined the majority of Circuits¹ in determining that district court orders denying appointed counsel are not final nor collateral orders that may be appealed with an interlocutory appeal. *Henry v. City of Detroit Manpower Dept.* 763 F.2d 757 (6th Cir. 1985). Therefore, Plaintiff’s motion to file an appeal challenging the this Court’s orders denying him appointed counsel is DENIED.

Motions for Discovery and/or Sanctions (Dkt. ##110, 111, 115, 116, 119) – HELD IN ABEYANCE – It is not possible from reading these motions to determine whether these motions are referring to a continuing failure to respond to one discovery request or failures to respond to multiple discovery requests. Furthermore, Plaintiff has not replied to Defendant’s allegation that he has responded to all outstanding discovery.

Therefore, on or before September 12, 2006, Plaintiff shall indicate to which discovery request each motion is referring, the date on which the request was served, the date he received a response, if any, and any remaining issue(s) by completing the form attached hereto as Exhibit 1 and submitting it along with a properly captioned Reply providing any explanation or supporting

¹“The different circuits have not agreed on the application of the collateral order doctrine to district court orders refusing to appoint counsel for plaintiffs. Almost all of the prior decisions concern civil rights cases. The First, Second, Third, Fourth, Sixth, Seventh, Tenth, and Eleventh Circuits have held that district court orders denying plaintiffs appointed counsel in civil cases are not immediately appealable under the collateral order doctrine. The Ninth Circuit takes the unusual position that the plaintiff can immediately appeal the district court's decision not to appoint him counsel in Title VII cases, but holds otherwise in cases involving 42 U.S.C. § 1983. Only the Fifth and Eighth Circuits have held that a plaintiff can immediately appeal the denial of appointed counsel in civil rights cases.” *Marler v. Adonis Health Products*, 997 F.2d 1141, 1142 (5th Cir.1993) (citations omitted).

documentation he wishes to have considered. On or before September 26, 2006, Defendant shall respond in kind in a Sur-Reply.

Failure to comply with this Order shall result in denial of these motions.

SO ORDERED.

Dated: August 29, 2006
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

I hereby certify that copies of this Order were served upon the attorneys of record by electronic means and/or U. S. Mail on August 29, 2006.

s/Deadrea Eldridge
Courtroom Deputy Clerk

Hardy v. Vieta – Case No. 02-40255

Motion #	Discovery Request Title	Date Served	Plaintiff - Response Received Defendant - Response Sent	Remaining Issue (if YES, explain on separate sheet)
110			YES/NO Date:	YES/NO
111			YES/NO Date:	YES/NO
115			YES/NO Date:	YES/NO
116			YES/NO Date:	YES/NO
119			YES/NO Date:	YES/NO